

Conservation Tax Credit Regulations Chapter 391-1-6 A-1

**RULES OF GEORGIA DEPARTMENT OF NATURAL
RESOURCES**

CHAPTER 391-1-6

GEORGIA CONSERVATION TAX CREDIT PROGRAM

TABLE OF CONTENTS

391-1-6-.01 Purpose and Scope. Adopted
391-1-6-.02 The Name of the Program. Adopted
391-1-6-.03 Definitions. Adopted
391-1-6-.04 Application for Pre-certification and Certification.
Adopted
391-1-6-.05 Monitoring and Reporting Requirements. Adopted

391-1-6-.01 Purpose and Scope

- (1) To provide for state income tax credits with respect to qualified donations of real property for conservation purposes and to provide for authority of the Department of Natural Resources to provide conditions, limitations, and exclusions for the Georgia Conservation Tax Credit Program
- (2) The Department of Natural Resources shall be the certifying agency by:
- (a) determining that property donated under this program is a Qualified Donation of Conservation Land; and
- (b) providing an official certification form to the donor of Conservation Land that qualifies the donor for a state income tax credit.

391-1-6-.02 The Name of the Program

The program shall be referred to as the Georgia Conservation Tax Credit Program (GCTCP).

391-1-6-.03 Definitions

- (1) “Applicant” means a Georgia taxpayer, either individual, partnership, corporation, professional association, limited liability company, or other entity, who makes, or contemplates making, a Qualified Donation to a Qualified Organization.
- (2) “Certification” means final determination by the Department that an Applicant has made a Qualified Donation of Conservation Land.
- (3) “Conservation Easement” means a non-possessory interest of a holder in real property as defined in O.C.G.A. § 44-10-2 (1).
- (4) “Conservation Land” means Permanently Protected land and water, or interests therein, that is in its undeveloped, natural state or that has been developed only to the extent consistent with, or is restored to be consistent with, one or more of the following conservation purposes as defined below:
 - (a) Protection of water quality through the conservation of land containing a substantial amount of 100-year floodplain or containing streams, rivers, springs, marshlands, or natural wetlands, and which have a Permanently Protected vegetated buffer, such buffer being no less than 100 feet wide as measured from the edge of the water body or wetland and wherein no land-disturbing activities, timber harvest, or agricultural operations will occur;
 - (b) Reduction of erosion through the conservation of land containing a substantial amount of steep slopes of greater than 25% that will be protected from soil-disturbing activities;
 - (c) Protection of wildlife habitat through the conservation of high priority plants, animals, and habitats as defined by Georgia’s Comprehensive Wildlife Conservation Strategy dated August 31, 2005, a copy of which can be obtained on the web at www.gadnr.org/cwcs or from the Wildlife Resources Division of the Department of Natural Resources 2070 U.S. Hwy. 278, SE, Social Circle, GA 30025 (Tel: 770-918-6400);
 - (d) Maintenance of prime farmland and forestry land managed according to current Best Management Practices as defined by the Georgia Soil and Water Conservation Commission and/or the Georgia Forestry Commission. Such properties must consist of a

minimum of ten (10) contiguous acres and be used for production of timber products, crops, or livestock;

(e) Provision of compatible, low-infrastructure natural-resource based outdoor recreation as described in Georgia's Statewide Comprehensive Outdoor Recreation Plan 2008-2013, a copy of which can be obtained on the web at www.gastateparks.org or from the Georgia State Parks & Historic Sites Division of the Department of Natural Resources at 2 Martin Luther King, Jr. Dr., Suite 1352 East, Atlanta, GA 30334 (Tel: 404-656-2770), through the protection of land which is accessible for substantial and regular use by the general public at little or no cost;

(f) Provision of habitat or recreational connectivity through the protection of land contiguous with existing Conservation Lands, or with local, state, or federal lands managed primarily for natural habitat and which are open to the general public; and

(g) Protection of land with significant archaeological and/or historic sites, listed in or eligible for the Georgia Register of Historic Places either individually, or as a contributing building or land area within a historic district.

(5) "Department" means the Department of Natural Resources.

(6) "Permanent Protection" and "Permanently Protected" mean the protection of land and water resources as defined in O.C.G.A. § 12-6A-2 (10).

(7) "Pre-Certification" means preliminary determination by the Department that an Applicant's proposed Qualified Donation meets the criteria for Conservation Land.

(8) "Qualified Donation" means the fee simple conveyance of 100 percent of all right, title, and interest in the entire property, either by full donation or a discounted sale below Fair Market Value, or an interest in property which qualifies as a Conservation Easement, which has been accepted by a Qualified Organization and which has been permanently protected. The following types of properties and easements are specifically not eligible as qualified donations under this program:

(a) Any real property which is used for or associated with the playing of golf, or other high-infrastructure recreational facility;

(b) Any real property which is otherwise required to be dedicated open space pursuant to local governmental regulations or ordinances or to increase building density levels; and

- (c) Except as otherwise provided in O.C.G.A. § 48-7-29.12
- (d)(2), only one qualified donation may be made on a property that was part of a larger parcel under the same ownership in the prior year.
- (9) “Qualified Organization” means the federal government, state, a county, a municipality, or a consolidated government of this state; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code. To be a Qualified Organization, a charitable nonprofit organization must:
 - (a) Be authorized to do business in Georgia and, if required, be currently registered with the Georgia Secretary of State;
 - (b) Have received tax-exempt status as a charity under section 501c(3) of the Internal Revenue Code of 1986 as stated in a Determination Letter provided by the Internal Revenue Service;
 - (c) Meet the requirements of section 1.170A-14(c) of the Internal Revenue Code of 1986, and therefore have the power to acquire, hold, or maintain land or interests in land; and
 - (d) Have adopted the Land Trust Alliance’s *Land Trust Standards and Practices (2004)*, a copy of which can be obtained from www.lta.org, as guidelines for the organization’s operations.

391-1-6-.04 Application for Pre-Certification and Certification

- (1) Application forms for Pre-Certification or Certification may be obtained from the Department. The Applicant shall submit the completed application to the Department with all attachments necessary to provide sufficient information for review and evaluation.
- (2) The Department shall review all completed Pre-Certification applications and shall make a preliminary determination as to whether or not the proposed donation is a Qualified Donation of Conservation Land. The Applicant shall be notified of this determination by letter within 60 days of receipt of the application. The Department shall reject Pre-Certification applications that are incomplete, incorrect, or do not meet the definition of Conservation Land, including applications where the conservation easement does not provide for Permanent Protection as required in this chapter. If the Department rejected the Pre-Certification application because it was incomplete or incorrect, the Applicant may resubmit the Pre-certification application with

revised or corrected information for consideration by the Department.

(3) Application for Certification of a donation may be made only after the property transaction has been completed and recorded by deed or other method to assure Permanent Protection. The Department shall review all completed Certification applications and shall make a determination as to whether or not the donation is a Qualified Donation of Conservation Land. The Applicant will be notified of this determination, including the reason for rejection, if applicable, by letter within 90 days of receipt of the application. The Department shall reject Certification applications that are incomplete, incorrect, or are not Qualified Donations of Conservation Land, including applications where the conservation easement does not provide for Permanent Protection as required in this chapter. If the Department rejected the Certification application because it was incomplete or incorrect, the Applicant may resubmit the application with revised or corrected information for consideration by the Department.

(4) A final determination by the Department on a Certification application shall be subject to review and appeal under Chapter 13 of Title 50, the Georgia Administrative Procedure Act. To contest the Department's final determination, an applicant must file a petition for a hearing within thirty (30) calendar days after issuance of notice of the Department's final determination. A petition for hearing must be in writing and must comply with all applicable requirements set forth in Rules 391-1-2-.03, 391-1-2-.04 and 391-1-2-.05. The date upon which a petition for hearing is deemed to be filed with the Department is determined in accordance with Rule 391-1-2-.04. The failure of an applicant to file a petition for hearing within thirty (30) calendar days after issuance of notice of the Department's final determination shall operate as a waiver of the applicant's right to contest the determination and the determination shall become the final decision of the Department in accordance with O.C.G.A. § 50-13-19.

391-1-06-.05 Monitoring and Reporting Requirements

- (1) Holders of Conservation Easements certified under this program shall annually monitor the Conservation Easement to assure that the terms are maintained and shall prepare an annual monitoring report. The Department may request a copy of annual monitoring reports at any time. A Qualified Organization that fails to submit requested annual monitoring reports shall not be eligible to be a Qualified Organization until they are in compliance with this rule.
- (2) The Department shall annually submit to its Board a status report of the GCTCP.

By Authority of O.C.G.A 48-7-29.12.